trespass against any stranger entering upon the premises or interfering with the building operations.

I therefore hold that, as the holding was not vacant or unoccupied or only partially built upon, it was not open to the Commissioner to exercise the option as he had purported to do. The alternative assessment was also not available because the holding was bringing in no rent. In the result I agree with the submission of counsel for the bank that the holding was not rateable. The appeal is allowed with costs, and I further order that the sum of $8,820 deposited by the bank be refunded by the Commissioner.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Shearn, & Delamore & Co.*

BAPTIST v. PUBLIC PROSECUTOR

[A. Cr. J. (Syed Sheh Barakbah J.) September 29, 1961]

[Alor Star — Criminal Appeal No. 28 of 1961]

Criminal Law and Procedure — Bribery and corruption — Prevention of Corruption Ordinance, 1950, s.3(b) — Monetary inducement to Fisheries Assistant to issue Belat Panjang licences — Whether he was accomplice whose evidence required corroboration.

Penal Code, ss.116 and 165 — Abetment.

Appellant was charged under section 3(b) of the Prevention of Corruption Ordinance, 1950 for corruptly giving a person in the employment of the Fisheries Department (namely a Fisheries Assistant) a sum of $100 as an inducement for the issue of 2 belat panjang licences to his principal or alternatively for abetment under sections 116 and 165 of the Penal Code. The learned President found him guilty of both offences and convicted and sentenced him to 5 months' imprisonment. On appeal counsel for the appellant submitted (1) that as the Fisheries Assistant (North Kedah) had no jurisdiction to renew the licences, it could not be said that money was given to him as an inducement to do an act in relation to his principal's affairs, (2) that the said Fisheries Assistant was an accomplice whose evidence required corroboration.

Held: (1) by Kedah *Government Gazette* Notification No. 236 of 1957 the Fisheries Assistant was a Fishery Officer for the whole State of Kedah and a separation of the office into 2 divisions, viz. North Kedah on the one hand and Central and South Kedah on the other was merely a departmental arrangement to suit the public;

(2) on the facts of the case the Fisheries Assistant was not an accomplice whose evidence required corroboration.

Cases referred to:—

(1) *Abdul Hamid* v. *Public Prosecutor* [1956] M.L.J. 231.

(2) *Loh Kwang Seang* v. *Public Prosecutor* [1960] M.L.J. 271.

(3) *Hiralal Badlo* v. *Rex* [1950] M.L.J. 96.

(4) *Public Prosecutor* v. *Lim Yam* [1961] M.L.J. 29.

(5) *Emperor* v. *Anwar Ali* A.I.R. 1948 Vol. 35 Lahore 27.

(6) *Lian Teck Chew* v. *R.* [1955] M.L.J. 28.

CRIMINAL APPEAL.

B. K. Das (*Chang Min Tat* with him) for the appellant.

Abdul Kadir bin Yusof (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Syed Sheh Barakbah J.: The appellant in this case was charged before the learned President of the Sessions Court as follows:—

1. That you on 31.5.60 at about 3.25 p.m. at Fisheries Office, Alor Star, in the State of Kedah, did corruptly give to an agent, namely, Arshad bin Haji Md. Isa, Fisheries Assistant, in the employment of Fisheries Department, Federation of Malaya a sum of $100 as an inducement to do an act in relation to his principals' affairs to wit, to issue two Belat Panjang Licences to one Koad Chin Joo of Penang, and you have thereby committed an offence under section 3(b) of Prevention of Corruption Ordinance, 5/50.

Alternatively,

2. That you on 31.5.60 at 3.25 p.m., at Fisheries Office, Alor Star, in the State of Kedah, abetted the Commission by one Arshad bin Haji Md. Isa of an offence of obtaining valuable thing to wit cash $100 without consideration, punishable with imprisonment which said offence was not committed in consequence of the abetment and you have thereby committed an offence under sections 116 and 165 Penal Code.

He was found guilty on the principal charge and convicted and sentenced to five months' imprisonment. He now appeals against the conviction and sentence.

The facts of the case have been fully set out by the learned President in his judgment but in view of the arguments raised by Mr. Das, counsel for the appellant, it is necessary that I should deal with them at some length.

PW1, Arshad bin Haji Md. Isa was a Fisheries Assistant, North Kedah. Before June 1959 there was only one Officer in charge of the Fisheries Department for the whole State of Kedah and since that date there were two, one stationed at Sungei Patani and the other at Alor Star. PW1 was the Officer stationed at Alor Star.

The appellant was a Statistic Clerk at the Office of the Fisheries Officer, North-West Malaya, Penang. He kept records of licences issued in the Penang office. According to PW4, Fishery Officer, stationed at Penang, since February 2, 1959 the renewal of *belat panjang* licences was approved by him (PW4). Appellant had no authority to renew licences. The duty of the Fisheries Assistant was to recommend renewal to PW4 and also to inspect the belats before renewal. The two licences Exhibit P-2 were in respect of *belat panjang* at Tanjong Dawai. This would be within the jurisdiction of the Fisheries Assistant at Sungei Patani. PW1 had nothing to do with this.

On May 11, 1960 at about 1.30 p.m. appellant approached PW1 and asked him to issue two *belat panjang* licences to one Koad Chin Joo. PW1 told appellant that he could not renew the licences unless with the approval of the Fisheries Officer, North-West, at Penang. Appellant then

told PW1 that the Fisheries Officer would be going on Malayanisation soon and PW1 should not have any worry if he renewed them. PW1 did not agree to renew and according to PW1 appellant further said that if PW1 would renew the licence he would get a certain sum of money for him (PW1).

At about 5.00 p.m. on the same day PW1 lodged a report (Exhibit P-7) at the Police Station, Alor Star.

On May 14, 1960 he received a registered envelope (Exhibit P-2) containing two expired licences (Exhibit P-3) in the name of Koad Chin Joo and $21 cash (Exhibit P-4). He handed Exhibits P-2, P-3 and P-4 to Police Inspector, Frank David.

On May 18, 1960 appellant again came to see PW1 and enquired about the registered envelope. PW1 said that he had not received it. Appellant then asked PW1 to accompany him to the Post Office to enquire about it. PW1 waited outside when appellant spoke to the Counter Clerk (PW3). Then the appellant and PW1 went to Tai Ah Restaurant. There PW1 met a Chinese Koad Chin Hin whom appellant introduced as Koad Chin Joo to PW1. Appellant again asked PW1 about the licences but PW1 replied that he still could not issue them. The Chinese then handed $21 to the appellant. The lunch was paid by the Chinese. Later, appellant and PW1 returned to PW1's office. Appellant then told PW1 that since PW1 had received the registered envelope, he was giving PW1 $21 to renew the licences. PW1 refused to accept the $21 or to renew the licences. Later PW1 rang up Inspector Frank David.

Before leaving his Office, PW1 told appellant he could not renew the licences because he had no approval to do so. Then appellant told him that he would write a letter signing for the Fishery Officer, North-West, instructing PW1 to renew the licences. Appellant then typed out the letter Exhibit P-5 and signed it in PW1's presence. At first the date was typed out as May 16, 1960. Appellant amended it to May 12, 1960 and told PW1 that it would tally with the post marks of Exhibit P-2. The appellant posted Exhibit P-5 to PW1. On receiving it PW1 handed it to Inspector Frank David.

On May 29, 1960 appellant came again to PW1's Office and asked for the renewal of the licences. He told PW1 that he had not enough money, only $60, and he would come again on May 31, 1960. PW1 informed the Police Inspector about the incident and arrangement was made for the Inspector to be there on that date. PW1 was instructed to receive anything that was given to him.

On May 31, 1960 at about 3.15 p.m. the appellant came and sat in front of PW1. Appellant asked PW1 to renew the licences of Koad Chin Joo. He stood up, took out $100 from his purse and handed the money to PW1. PW1, who had no money on his person, received the $100 and placed them in his shirt pocket. At a prearranged signal, Inspector Frank David came into the Office, identified himself, searched PW1 and recovered the $100 (Exhibit P-6) in PW1's shirt pocket. The appellant was then arrested.

It was conceded that the $100 was paid by the appellant to PW1 and the point at issue is "what was the character of the payment?" Was the amount corruptly given to PW1 as an inducement to do an act in relation to his principal's affairs to wit, to issue two *belat panjang* licences to one Koad Chin Joo, as alleged by the prosecution, or was it in payment of a debt due by the appellant to PW1, as alleged in his defence.

Counsel for the appellant submitted that as PW1 had no jurisdiction to renew the licences, it could not be said that the money was given as an inducement to do an act in relation to his principal's affairs. Therefore the charge of corruption against the appellant could not stand. With this submission I am unable to agree as according to *Kedah Government Gazette* Notification 236 of 1957 PW1 was a Fishery Officer for the whole State of Kedah and the separation of the Office into two divisions, *viz*: North Kedah with a Fishery Assistant stationed at Alor Star, and Central and South Kedah with a Fishery Assistant stationed at Sungei Patani was merely a departmental arrangement to suit the public. Therefore in my opinion, PW1 had, in law, jurisdiction to renew the licences. But assuming that PW1 had no jurisdiction, I am inclined to agree with the contention of the learned President, quoting the case of *Abdul Hamid* v. *Public Prosecutor* [1]. In his judgment Smith J. stated *inter alia:*

> "In this case it is clearly the affair of the Federal Government to recruit personnel for the Home Guard. Whether the accused had the power or not is immaterial: the question is for what purpose did the complainant give the money, was that purpose in relation to affairs of the accused's principal, and did the accused receive the money knowing the intention with which it was given by the complainant."

In *Loh Kwang Seang* v. *Public Prosecutor* [2], referred to by Mr. Das the forbearance to do the act was neither within the power of the accused nor within the power of accused's principal. Therefore the conviction was held wrong in law. Also in *Hiralal Badlo* v. *Rex* [3] and in *Public Prosecutor* v. *Lim Yam* [4] it was held that the arrest was illegal and therefore the conviction could not stand.

Now, the next question is whether PW1 was an accomplice whose evidence required corroboration. For the defence it was argued that PW1 was an accomplice and it would be most unsafe to convict on the evidence of PW1 alone — *Emperor* v. *Anwar Ali* [5]. As against this we have the Malayan case of *Lian Teck Chew* v. *Regina* [6]. With great respect I am inclined to agree with the view expressed by Murray-Aynsley C.J. in the latter case. In both those cases, the person who received the money was arrested, not the person who paid the money. In the present case the person who paid the money was arrested

and there appears to be no decided case as to whether the receiver is an accomplice or not. In my opinion it makes no difference whether the witness is the receiver or the payer and I therefore do not consider PW1 as an accomplice whose evidence requires corroboration.

The next point to consider is whether PW1 is a witness of truth or not. It is a question of fact and the learned President has found as a fact that PW1 is a truthful witness. In his judgment at paragraph 7 he stated that PW1 contacted the police on the following occasions:—

(i) On 11.5.60 at 5 p.m. he reported the Police (Exhibit P-7).

(ii) On 14.5.60 he handed Exhibit P2, P3 and P4 to Inspector Frank David.

(iii) On 18.5.60 he phoned up Inspector Frank David about his meeting with the accused, their visit to the Post Office, his meeting with Koad Chin Hin, who was introduced to him as Koad Chin Joo and about his conversation with accused. PW1 also handed Exhibit P5 to Inspector Frank David.

(iv) On 29.5.60 PW1 also reported the incident between him and accused when accused said he had not enough money, that he had only $60 and that he would come again on 31.5.60.

(v) As a result of the pre-arranged "trap", accused was found sitting opposite PW1 in the same room and $100 was recovered from the shirt pocket of PW1 on 31.5.60.

The report Exhibit P-7 was the first information made to the police by PW1, and in it there was no mention about accused giving him money. It was stated that accused had taken money from some fishing stake owner in Penang. According to the defence P-7 is not an information in connection with this particular charge, and also there was discrepancy between PW1's report P-7 and his evidence in chief. PW1's explanation which was accepted by the learned President was that he was nervous and disturbed when he made the report although according to the evidence of Inspector Frank David, PW1 was not nervous, quite normal and not excited. He wrote the report himself. The learned President has given his reasons for not believing the evidence of the appellant and his two witnesses. I am inclined to agree with his views.

In my opinion the learned President has been very thorough and careful in his judgment and has dealt with every aspect of the case. PW1 had made contact with the police from the first meeting with the appellant until appellant's arrest, and taking the evidence as a whole I am satisfied that the learned President has not erred in coming to the decision which he did. I therefore do not feel disposed to disturb his finding.

The appeal is therefore dismissed and the conviction and sentence of the Court below confirmed.

Appeal dismissed.

Solicitor: *Chang Min Tat.*

GAN CHYE HUAT v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) October 2, 1961]

[J.B. — Criminal Appeal No. 28 of 1961]

Road Traffic — Private vehicle — Presumption under s.144(a), Road Traffic Ordinance, 1958 — Charge under s.92(1).

The accused was charged under section 92(1) of the Road Traffic Ordinance, 1958, for having used a private motor-car as a public service vehicle without there being in force a valid licence authorising same. The learned Magistrate held that the presumption under section 144(a) of the said Ordinance applied and that it had not been rebutted by the defence. He fined the appellant $400 and ordered that the motor-car be confiscated. On appeal,

Held: the presumption under section 144(a) could not have arisen and there is not the remotest cause for resorting to it. There must at all times be adequate ground work before applying the presumption, otherwise every private vehicle owner will be presumptively guilty of an offence under section 92(1) every time he carries in his car any passenger not related to him.

Observations on *obiter* in *Gun Kim Luu* v. *Public Prosecutor* (1).

Case referred to:—

(1) *Gun Kim Luu* v. *Public Prosecutor* [1961] M.L.J. 35.

CRIMINAL APPEAL.

L. M. Ong for the appellant.

Sheik Abdul Rahman (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong J.: The accused was convicted in Johore Bahru Magistrate's Court under section 92(1) of the Road Traffic Ordinance, 1958, for having used a private motor-car as a public service vehicle without there being in force a valid licence authorising such use. He was fined a sum of $400 and the motor-car in question ordered to be confiscated.

The facts of this case are very simple. On June 7, 1961, at about 7.15 a.m. a detective police constable attached to the Railway C.I.D. at Singapore, while on duty at the Singapore Railway Station near the 3rd class booking office, observed the appellant walking about in a manner which the witness thought fit to describe as "loitering". He saw him speak to a Chinese couple who accompanied him to his car which was then driven away. This perfectly commonplace occurrence, which takes place daily in railway stations at the hours of arrival and departure of trains to and from this terminus, aroused the suspicions of the detective for reasons which I have not attempted to fathom. As a result he telephoned to the Traffic Police at Johore Bahru requesting them to detain the motor-car, the registration number of which he supplied. About an hour later the car was detained by the police at the Customs checking point, Johore Bahru. It carried two passengers and was driven by the appellant, all of whom were identified by the detective when he duly arrived at Johore Bahru four hours after the car had been detained. The appellant was